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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

FREDERICK TUCKER, and individual,

Plaintiff,

vs.

BRITISH AIRWAYS PLC, dba BRITISH
AIRWAYS PLC, LTD, a foreign corporation;
OMNISERV LIMITED, an ABM COMPANY and
foreign corporation; AIR SERV CORPORATION, a
foreign corporation; ABM Industries, a foreign
corporation;

Defendants

Case No.:

PLAINTIFF'S COMPLAINT
FOR DAMAGES

I. PARTIES

1.1 **Frederick Tucker** is a resident of Island County, Washington.

1.2 **British Airways PLC**, ("British Airways") dba British Airways PLC, LTD., is a foreign corporation organized and existing under the laws of Great Britain, with its principal place of business /registered office in Waterside, Hammondsworth, Great Britain. British Airways also has a registered agent in Washington and does business in King County Washington.

1.3 **Omniserv Limited** ("Omniserv"), an ABM Company, was formed in 2004 and is the European Division of AirServ Corporation, a company based in Atlanta Georgia and "the aviation vertical of ABM Industries" (ABM Industries, Inc.). ABM Industries was formerly known as American Building Material.

1 Omniserv does business in Great Britain and specifically at Heathrow Airport, London. ABM
2 Industries, Inc. ("ABM") is incorporated in Delaware and does business in multiple locations including
3 Washington State where it has a business presence in King County and in Seattle, and SeaTac, and/or
4 other locations.

5 1.4 **Air Serv Corporation** ("Airserv") is a company based in Atlanta, Georgia, USA, and existing
6 under the laws of the state of Georgia, maintaining its principal place of business in the state of Georgia,
7 registered to do business in Washington and doing business within King County. Defendant Omniserv
8 is its European Division.

9 1.5 **ABM Industries, Inc.** ("ABM"), is incorporated in Delaware and does business in multiple
10 locations including Washington state where it has a business presence in King County and in Seattle,
11 and SeaTac, and/or other locations. Defendants Omniserv, and Airserv are wholly owned companies,
12 subsidiaries or other entities of ABM. ABM has owned Airserv since at least 2004.

13 1.6 On or before April 29, 2014 Defendant British Airways was and still is a common carrier in the
14 business of transporting passengers for hire.

15 1.7 Defendants Omniserv and AirServ are businesses engaged in the business of supporting
16 airlines, which are common carriers. Many of the services which these defendants provide to airlines
17 were once performed by the airlines themselves. These services include ground transportation, skycap,
18 wheelchair service, unaccompanied minor service, electric cart drivers and cleaning of jet airlines.

19 1.8 On or before April 29, 2014 these defendants Omniserv and Airserv were common carriers in
20 the business of transporting passengers for hire. The acts of each or any of them render the others and
21 their parent company, ABM, liable to plaintiff for their errors and/or admissions as asserted in this
22 complaint.

23 1.9 On or before April 29, 2014 each of these defendants, Airserv, Omniserv and ABM were the
24 agents of one another and the agent of defendant British Airways.

II. JURISDICTION AND VENUE

2.1 This action is properly brought before and in the United States District for the Western District at Seattle pursuant to 28 U.S.C. § 1332(a) on the basis of diversity of citizenship and on the basis and the amount in controversy exceeds the jurisdictional amount of \$75,000 as provided therein. Further this action is brought before this court pursuant to 28 U.S.C. § 1332(a) and § 1367, in that this matter arises under the laws, regulations and treaties of the United States, including but not limited to the Warsaw Convention, 49 Stat. 3000 *et seq.* (reprinted at 49 U.S.C. § 1502 note (1976)) and its modifications; 14 C.F.R. § 203 *et seq.*; the Convention for the Unification of Certain Rules for International Carriage by Air, May 28, 1999 (2003), Treaty Doc. No. 106-45, 2242 U.N.T.S. 350 (“Montreal Convention”); the IATA Inter-Carrier Agreements on Passenger Liability (IIA) and the Agreements on Measures to Implement the IATA Inter-carrier Agreement (“MIA”) (“IIA” and “MIA” Agreements); and/or related Tariffs; additionally the amount in controversy exceeds \$10,000.00 as provided by 28 U.S.C.A. § 1337.

2.2 Pursuant to Article 33 of the Montreal Convention, this action for damages is brought before the Court at the place of Plaintiff’s destination.

2.3 Venue is proper in this Court pursuant to 28 U.S.C. § 1391 (b) and (c).

2.4 This action is properly brought before the United States District Court for the Western District of Washington at Seattle because British Airways resides in this district.

2.5 This action is properly brought before the United States District Court for the Western District of Washington because Defendant AirServ resides in this District.

2.6 Defendants British Airways, AirServ, as well as defendants ABM (which resides in this district) maintain offices, conduct business and may be served in the Western District of Washington.

2.7 Defendants British Airways and AirServ, as well as ABM have carried on substantial and continuous business activities in the State of Washington.

1 2.8 Defendants British Airways, AirServ and ABM have all availed themselves of this jurisdiction.

2 III. FACTS

3 3.1 Prior to his flight and disembarkation at Heathrow on April 29, 2014, Plaintiff reserved a
4 British Airlines ticket for himself which included the flight from Rome to London, which flight he was
5 deplaning when injured that date.

6 3.2 Plaintiff had pre-booked wheelchair assistance and was recorded as WCHR passenger,
7 meaning he needed assistance in deplaning. When Plaintiff Tucker made his reservation he specifically
8 asked for a wheel chair for himself for disembarking which he routinely did for every flight he takes.

9 3.3 British Airways induced Plaintiff Tucker based on representations that it provided good service
10 to persons with disabilities or difficulties in ambulation as well as assuring him that it had placed his
11 wheelchair request for his flight to London.

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13 3.4 Plaintiff Frederick Tucker has difficulties walking which means that he needed special
14 assistance in boarding and deplaning the aircraft on which he was to travel from Rome to London.

15 3.5 On or before April 29, 2014 British Airways failed to inform Plaintiff Tucker that its agent
16 Omniserv, a division of AirServ, would be providing the transportation assistance which he had
17 contracted with British Airways to serve.

18 3.6 On April 29, 2015 Plaintiff Frederick Tucker was a fare-paying passenger aboard a British
19 Airways aircraft with a destination of London from Rome on British Airways Flight 553, with his final
20 destination being his home in Langley, Whidbey Island, Washington. His next flight and his flight
21 home was scheduled to depart that day by way of British Airways Flight 49 from London to Seattle.

22 3.7 At all times mentioned herein British Airways was and is a common carrier engaged in the
23 business of transporting passengers for hire by air.

24 3.8 At all times mentioned herein, Defendants Omniserv, AirServ and their principal, ABM by its
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1 ownership of them as its agents, were and are common carriers engaging in the business of providing
2 wheel chair service and transportation assistance to fare-paying passengers.

3 3.9 At all times mentioned herein Defendants Omniserv, AirServ and their principal, ABM were
4 and are the agents for British Airways.

5 3.10 When his flight from Rome to London landed at Heathrow, London, Plaintiff Frederick Tucker
6 remained in his seat while the other passengers deplaned. Due to Plaintiff Tucker's infirmities he
7 required a wheel chair to completely exit the plane and to enter the terminal.

8 3.11 Soon after the flight landed at Heathrow a female flight attendant told Plaintiff Frederick
9 Tucker to remain in his seat, and then he would be escorted out to the jetway where a wheelchair would
10 be for the remainder of his exit from the plane and into the terminal. Plaintiff Tucker was sitting near
11 the front of the aircraft. When it was his turn to deplane the flight attendant helped him up from his seat
12 and took his hand and led him to the entrance (exit) of the plane, holding his hand as she did.

13 The flight attendant took his arm and assisted him to the outside of the plane and located a
14 wheelchair. There was also a pilot and / or another employee or attendant present. The flight assistant
15 and/or another positioned the wheelchair but then failed to complete assisting him into the chair. When
16 Plaintiff Frederick Tucker went to sit the chair was not there and in attempting to adjust to the absence
17 or misplacement of the wheelchair he fell forward suffering facial and other injuries including but not
18 limited to the loss of a tooth and a cut to his head, as well as more serious injuries for which he had to
19 have medical treatment. He was brought upright by a crew member or an agent of British Airways and
20 given a rag to stem the bleeding from his forehead. A member of the British Airways crew stated "we
21 will make it right". Plaintiff Frederick Tucker's fall and injuries were a result of defendants' errors and
22 omissions.

23 3.12 As a result of his fall Plaintiff Frederick Tucker experienced immediate and extensive pain and
24 discomfort.

1 3.13 Plaintiff Frederick Tucker was issued a meal voucher for all three meals on April 29, 2014.

2 3.14 Plaintiff Frederick Tucker was transferred from Heathrow Airport to Hillington Hospitals NHS
3 Foundation Trust in Middlesex for medial treatment. He was admitted on April 29, 2014 at 15:51 hours.

4 3.15 Following his arrival in Seattle he went to the Stroke Clinic of Harborview Medical Center
5 (HMC) on May 23, 2014 where his regular physician from a prior and unrelated (to this event)
6 admission, Dr. Weinsten was practicing. He was diagnosed with head trauma and headache and there
7 diagnosed with a degree of cognitive impairment and an abnormal MRI arising from his injuries
8 occurring while deplaning from British Airways Flt 553 at London on April 29, 2014. As a result of the
9 fall at Heathrow he suffered injuries and sustained damages.

10 IV. DUTY

11 4.1 Plaintiff hereby alleges and incorporates all paragraphs in Sections I-III, above, by reference
12 herein.

13 4.2 Defendant British Airways, its officers, agents (including Omniserv, AirServ, ABM and
14 its/their officers, agents, servants and/or employees), servants and/or employees had a duty of utmost
15 care and vigilance to its / their fare-paying passengers, including Plaintiff Frederick Tucker, to transport
16 him/them safely.

17 4.3 Defendants AirServ, Omniserv and ABM, its/their officers, agents, servants and/or employees
18 had a duty of utmost care and vigilance to its / their fare-paying passengers, including Plaintiff Frederick
19 Tucker, aboard Defendant British Airways' aircraft to transport them safely.

20 4.4 Defendant British Airways had a duty to use the highest degree of care consistent with the
21 operation of its aircraft and its business as a common carrier.

22 4.5 Defendants AirServ, Omniserv and ABM had the duty to use highest degree of care consistent
23 with its / their business as a wheelchair provider.

24 4.6 Defendants AirServ, Omniserv and ABM had the duty to use highest degree of care consistent
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1 with its / their business as a common carrier.

2 4.7 Given his infirmities and/or disability Defendants British Airways, and its officers, agents
3 (including AirServ, Omniserv and ABM and its/their officers, agents and/or employees), servants and/or
4 employees owed an even higher duty of care to Plaintiff Frederick Tucker than it / they owed to
5 passengers in good health.

6 4.8 Given his infirmities and/or disability Defendants AirServ, Omniserv and ABM, and its / their
7 officers, agents and its/their officers agents and/or employees, servants and/or employees owed an even
8 higher duty of care to Plaintiff Frederick Tucker than it / they owed to passengers in good health.

9 V. NOTICE

10 5.1 Plaintiff hereby alleges and incorporates all paragraphs in Sections I-IV, above, by reference
11 herein.

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13 5.2 Prior to the aforementioned incident on British Airways Flight 553, Defendant British Airways
14 received actual or constructive notice of Plaintiff Frederick Tucker's ambulation difficulties.

15 5.3 Prior to the aforementioned incident on British Airways Flight 553, Defendant AirServ
16 received actual or constructive notice of Plaintiff Frederick Tucker's ambulation difficulties.

17 5.4 Prior to the aforementioned incident on British Airways Flight 553, Defendant British Airways
18 received actual or constructive notice that Plaintiff Frederick Tucker's ambulation difficulties would
19 require wheelchair assistance.

20 5.5 Prior to the aforementioned incident on British Airways Flight 553, Defendant AirServ,
21 Omniserv, and ABM received actual or constructive notice that Plaintiff Frederick Tucker's ambulation
22 difficulties would require wheelchair assistance.

23 5.6 Prior to the aforementioned incident on British Airways Flight 553, Defendant British Airways
24 and its agents knew or should have known that they could not safely transport Plaintiff Frederick
25

1 Tucker's without appropriately trained personnel or appropriate equipment.

2 5.7 Prior to the aforementioned incident on British Airways Flight 553, Defendant AirServ,
3 Omniserv, and ABM and their agents knew or should have known that they could not safely transport
4 Plaintiff Frederick Tucker's without appropriately trained personnel or appropriate equipment.

5 **VI. NEGLIGENCE AND CAUSATION**

6 6.1 Plaintiff hereby alleges and incorporates all paragraphs in Sections I-V, above, by reference
7 herein.

8 6.2 At all times material hereto, British Airways Flight 553 was operated by a common carrier
9 engaged in the business of transporting fare-paying passengers. As a common carrier, Defendant British
10 Airways owed the highest duty of care to its passengers, including Plaintiff Frederick Tucker, a
11 passenger on Flight No. 553.

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13 6.3 At all times material hereto, AirServ Corp. was a common carrier engaged in the business of
14 providing wheelchair service and transportation assistance to fare-paying passengers on British Airways
15 Flight No. 553. As a common carrier, Defendants AirServ, Omniserv, and ABM owed the highest duty
16 of care to these passengers, including Plaintiff Frederick Tucker, a passenger on Flight No. 553.

17 6.4 At all times material hereto, the relationship of disabled passenger to common carrier existed
18 between Defendant British Airways and its agents (including Defendants AirServ, Omniserv, and ABM
19 and its agents) and Plaintiff Frederick Tucker.

20 6.5 At all times material hereto, the relationship of disabled passenger to common carrier existed
21 between Defendants AirServ, Omniserv, and ABM and its agents and Plaintiff Frederick Tucker.

22 6.6 Defendant British Airways was negligent in that it failed to provide Plaintiff Frederick Tucker,
23 a passenger on Flight No. 533, with the service and attention required by a disabled passenger.

24 6.7 Defendants AirServ, Omniserv, and ABM were negligent in that it failed to provide Plaintiff
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1 Frederick Tucker, a passenger on Flight No. 533, with the service and attention required by a disabled
2 passenger.

3 6.8 Defendant British Airways was negligent in that it failed to exercise the highest degree of care
4 commensurate with the practical operation of Flight No. 533 in its business as a common carrier.

5 6.9 Defendants AirServ, Omniserv, and ABM were negligent in that they failed to exercise the
6 highest degree of care commensurate with the practical operation of its business as wheelchair service
7 provider.

8 6.10 Defendants AirServ, Omniserv, and ABM were negligent in that they failed to exercise the
9 highest degree of care commensurate with the practical operation of its business as a common carrier.

10 6.11 Defendant British Airways' negligence proximately caused injuries and damages to Plaintiff
11 Frederick Tucker as identified in section VIII of this Complaint.

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13 6.12 Defendants AirServ's, Omniserv's, and ABM's negligence proximately caused injuries and
14 damages to Plaintiff Frederick Tucker as identified in section VIII of this Complaint.

15 **VII. BREACH OF CONTRACT**

16 7.1 Plaintiff hereby alleges and incorporates all paragraphs in Sections I-VI, above, by reference
17 herein.

18 7.2 Defendant British Airways agreed to safely transport Plaintiff Frederick Tucker for
19 compensation.

20 7.3 Defendant British Airways breached this agreement by failing to safely transport Plaintiff
21 Frederick Tucker and by failing to provide him with the service and attention required by a disabled
22 passenger. As a result Plaintiff sustained damages as identified in Section IX of this Complaint.
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24 **VIII. BRITISH AIRWAYS' VIOLATION OF THE CONSUMER PROTECTION ACT**

25 8.1 Plaintiff hereby alleged and incorporates all paragraphs in Section I-VII, above, by reference
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1 herein.

2 8.2 Defendant British Airways engaged in deceptive practice prohibited by the Washington
3 Consumer Protection Act, RCW 19.86.

4 8.3 Plaintiff Frederick Tucker relied on British Airways' statements and representations regarding
5 the transportation assistance it provided its passengers with special travel needs.

6 8.4 In its advertising, British Airways holds itself out as providing appropriate service to travelers
7 with disabilities. This advertising induced Plaintiff Frederick Tucker to become a fare-paying passenger
8 aboard British Airways Flight No. 533.

9 8.5 After Frederick Tucker affirmatively advised British Airways that he was disabled and needed
10 travel assistance, British Airways represented that they would provide this assistance.

11 8.6 The statements and representations made by Defendant British Airways (8.4, 8.5) constitute a
12 deceptive practice.

13 8.7 British Airways concealed that AirServ was its agent and would be providing the travel
14 assistance that British Airways contracted with Plaintiff Frederick Tucker to provide.

15 8.8 Plaintiff Frederick Tucker believed that British Airways itself would provide the travel
16 assistance.

17 8.9 By concealing the facts set forth in Paragraphs 8.7 above, and other facts, British Airways
18 deceived Plaintiff Frederick Tucker, and had the capacity to deceive other passengers with special travel
19 needs into becoming fare-paying passengers aboard British Airways.

20 8.10 Defendant British Airways representations constitute unfair or deceptive acts or practices in the
21 conduct of trade or commerce. The service of providing wheelchairs and travel assistance to fare-paying
22 passengers with special travel needs heavily affects the public interest.

23 8.11 As a result of Defendant British Airways false and misleading representations about the travel
24 assistance it would provide Plaintiff Frederick Tucker, he paid for a plane ticket and travel assistance

1 that resulted in his suffering the physical and emotional damages identified in Section IX as well as
2 property loss.

3 **IX. DAMAGES**

4 9.1 Plaintiff hereby alleges and incorporates all paragraphs in Sections I-VIII, above, by reference
5 herein.

6 9.2 Defendant British Airways' negligence proximately caused injuries and damages to Plaintiff
7 Frederick Tucker, including but not limited to severe physical injuries, past and future medical expenses,
8 past and future pain and suffering, past and future emotional distress, past and future loss of enjoyment
9 of life, past and future physical disability, trauma, fear, fright, embarrassment, and any and all special
10 and general damages allowed by law or otherwise, and property loss, all in an amount to be proven at
11 trial.

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13 9.3 Defendants AirServ's, Omniserv's, and ABM's negligence proximately caused injuries and
14 damages to Plaintiff Frederick Tucker, including but not limited to severe physical injuries, past and
15 future medical expenses, past and future pain and suffering, past and future emotional distress, past and
16 future loss of enjoyment of life, past and future physical disability, trauma, fear, fright, embarrassment,
17 and any and all special and general damages allowed by law or otherwise, and property loss, all in an
18 amount to be proven at trial.

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20 **X. PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for judgment of liability in favor of the Plaintiff and against the
22 Defendants herein as follows:

23 10.1 For judgment against Defendants for general and special damages in an amount to be proven at
24 the time of trial;

25 10.2 For all costs and expenses herein;

1 10.3 For prejudgment interest on all damages herein;

2 10.4 For attorney fees, disbursements, and litigation expenses;

3 10.5 For treble damages consistent with RCW 19.86.090.

4 10.6 For such other and further relief as this Court deems just and equitable.

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6 DATED this 28th day of April 2016.

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